

[Advisory Opinion 1995-16]

October 18, 1995

To: [Name withheld]
County Attorney

FROM: Jay L. Cohen, Chair
Montgomery County Ethics Commission

RE: Request for Advisory Opinion

You have requested an advisory opinion from the Commission regarding certain events to which you are invited from time to time in your capacity as County Attorney. Occasionally, the nature of the invitation is to join a company in its office outing or to participate in an outing that is charitable in nature. In these situations, the cost for participation is paid by the company or the company's donation to a charity covers the cost. Some invitations come from companies with which the County has a contract for services, or which the County regulates, or which are involved in litigation. You explained that the nature of your position requires you to associate with and socially to interact with individuals who represent businesses and law firms that regularly do business with the County better to understand the problems associated with doing business with the County and to assure that "lines of communication" are open between the County and the business community.

You have requested some insight into the criteria for determining under what circumstances you are precluded from accepting invitations and when you may accept such invitations under Montgomery County Ethics Law. You provided two recent examples of events that raised this question: 1) an invitation from a representative of Bell Atlantic to participate in his golf foursome in an event sponsored for the benefit of Montgomery College; and 2) an invitation from Cable TV Montgomery to play golf in an all-day event sponsored by the company. In these situations, you understand that Bell Atlantic has committed to pay an amount as a donation to the College that will allow it a certain number of players in the tournament; there is no option for you to pay the fees associated with the event on your own.

Applicable Provisions of Ethics Law

Your request involves the interpretation of the gift section of the Ethics Law. Generally, a public employee may not solicit a gift in their capacity as a public employee and may not accept a gift from a lobbyist, an individual or organization that does business with the agency with which the employee is affiliated. §19A-16(a) and (c) of the Montgomery County Code 1994, as amended. A public employee may accept a gift from these individuals, however, if the gift is of a certain type. §19A-16(d) of the Montgomery County Code.

The section that appears to address the golf invitation appears in §19A-16(d)(5) of the Ethics Law, which permits acceptance of :

[G]ifts to a public employee who must file a public financial disclosure statement under subsection 19A-17(a), if the gift:

- (A) is a courtesy extended to the office; and
- (B) consists of tickets or free admission for the employee and one guest to attend a charitable, cultural, civic, labor, trade, sports, or political event, including meals and beverages served at the event; . . .

The response to your inquiry depends upon whether your position as County Attorney is an “office” within the Ethics Law and whether the types of golfing events are within the types that are listed above.

Analysis

The Commission has determined previously that elected officials are within the scope of “office” in §19A-16(d)(5) of the Ethics Law. These individuals file public financial disclosure statements and frequently receive unsolicited invitations to events based upon the position held by them. To date, the Commission has not issued any rulings concerning whether or not department heads, who are appointed rather than elected, are also within the scope of the term “office”.¹ Given recent amendments to the Ethics Law, the Commission is reluctant to reach this issue now, and finds that it does not need to in this case. Instead, The Commission has found simply that the position of the County Attorney, because it is established by the Montgomery County Charter, constitutes an office for purposes of §19A-16(d)(5).

The invitation to the charitable golf event is within the types of events delineated in §19A-16(d)(5) of the Montgomery County Code. As a result, attendance as a guest would be permitted. The pure business functions, however, appear to be outside the scope of the permitted events. This means that attendance as a non-paying guest would not be permitted by the Ethics Law, although attendance as an individual, paying your own fees, and without using your County title would be permissible.

¹ The Commission is troubled by the interplay of the amendment to the financial disclosure statement requirements that exempt these events from disclosure if the value does not exceed \$50. Since the acceptance of the gift in the first place was limited to a public employee who files a *public* financial disclosure statement, the Commission believes that disclosure of these types of gifts was to have provided necessary protections. §19A-19(d)(3)(C) of the Ethics Law. Based on the foregoing, the Commission, therefore, intends to review further an appropriate interpretation of the meaning of “office” and to incorporate such analysis in regulations issued pursuant to §19-A6(a) of the Ethics Law.

Hopefully, this provides you with the information you need to make these determinations on a case-by-case basis. If you have any questions concerning this opinion, please do not hesitate to contact the Commission.

cc: Barbara McNally, Executive Secretary, Montgomery County Ethics Commission